

# GERSTEIN HARROW LLP

*Re: Meadors v. Erie County Board of Elections*, No. 21-cv-982-JLS

Dear Judge Sinatra:

We represent the Erie County of Board Elections in this matter.

In response to a threat of contempt from Plaintiffs' counsel, we respectfully request an emergency telephone hearing or brief written order to clarify the Court's order of September 3.

The statutory deadline to take the ministerial action of certifying candidates who will appear on the ballots for the upcoming general election is today. Yesterday, the Fourth Department restrained the Board from "certifying the content and form of the ballots" for Mayor of Buffalo until further order. *See Exhibit B*. In the Board's view, this order prevents it from complying with today's ministerial certification deadline. The Board thus plans to comply with that Order and not certify the candidates who will appear on the ballot for Mayor of Buffalo *at all*.

We view not taking any action today as not in conflict with the Court's September 3 order, which deals with the ballots themselves, and not certification. Today's deadline is ministerial, and not certifying any candidate list for Mayor of Buffalo today has no impact on the Board's ability to comply with the Court's September 3 order regarding who will appear on the ballots themselves. Review of that order is pending in the Second Circuit.

That said, in light of Plaintiffs' threats, we request clarification from the Court, either by telephone hearing or written order, to ensure we are complying with all applicable court orders. My colleagues and I are available at the Court's convenience, including after hours this evening and early tomorrow.

Please note that my law partner Charlie Gerstein and I are not yet admitted to the Western District of New York, though we are both members of the Bar of New York. We'd respectfully request temporary admission pending the filing of our applications.

We thank the Court for its prompt attention to this important matter.

Sincerely,  
Jason Harrow  
*Counsel for Erie County Board of Elections*



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**Appellate Division, Fourth Judicial Department**

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CAE 21-01234

In the Matter of the Application of

BYRON W. BROWN,  
Petitioner-Candidate-Agrieved-Respondent,

V

ERIE COUNTY BOARD OF ELECTIONS,  
Respondent,

INDIA B. WALTON,  
Respondent-Objector-Candidate-Appellant,

JOAN L. SIMMONS,  
Respondent-Objector.

Erie County Supreme Court Index No: 811973/2021

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Respondent-Objector-Candidate-Appellant having moved by order to show cause for an order staying enforcement of the order of the Supreme Court, Erie County (Paul R. Wojtaszek, J.), entered September 7, 2021, pending the hearing and determination of the appeal taken herein, and for other relief,

Now, upon reading and filing the affidavit of Sean E. Cooney, Esq, attorney for Respondent-Objector-Candidate-Appellant, sworn to September 7, 2021, and the papers submitted therewith, and upon Terrance Connors, Esq., attorney for Petitioner-Candidate-Agrieved-Respondent, and Jeremy Toth, Esq., First Assistant Erie County Attorney, attorney for Respondent, and Joan L. Simmons, Respondent-Objector, pro se, having been heard by the Honorable Nancy E. Smith upon the motion at a telephone conference on September 8, 2021, and due deliberation having been had thereon,

It is hereby **ORDERED**, that all parties show cause before this Court on

the 16th day of September 2021 at 10:00 a.m at the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, 50 East Avenue, Rochester, New York, why an order should not be entered:

- (i) Staying enforcement of the order of the Supreme Court, Erie County (Hon. Paul R. Wojtaszek, J.S.C.), entered September 7, 2021, pending a final adjudication of the appeal of said order, and it is further

**ORDERED** that the motion is granted and enforcement of said order entered September 7, 2021, is stayed pending a determination of the motion by this Court, or until further order of this Court, and it is further

**ORDERED** that Respondent Erie County Board of Elections is hereby prohibited and restrained from certifying the content and form of the ballots containing the public office of the Mayor of the City of Buffalo pending the determination of the motion or until further order of this Court, and it is further

**ORDERED** that all relief granted in this order is conditioned on Respondent-Objector-Candidate-Appellant perfecting the appeal in this matter by 5:00 p.m. on Friday, September 10, 2021, and if the appeal is not perfected by that time, this order is hereby vacated without further order, and it is further

**ORDERED** that, sufficient reason appearing therefor, service of a copy of this order and the papers upon which it was granted via the New York State Courts Electronic Filing System (NYSCEF), on or before noon on September 9, 2021, shall be deemed good and sufficient service upon the following:

Jerry H. Goldfeder, Esq.  
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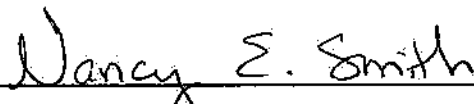
Jeremey Toth, Esq.  
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[jeremy.toth@erie.gov](mailto:jeremy.toth@erie.gov)  
Attorney for Respondent,

and it is further

**ORDERED** that, sufficient reason appearing therefor, service of a copy of this order and the papers upon which it was granted via Federal Express on or before September 10, 2021 be deemed good an sufficient service upon

Joan L. Simmons, pro se,  
Respondent-Objector,  
65 Holling Drive  
Buffalo, NY 14216

DATED this 8th Day of  
September, 2021

  
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Hon. Nancy E. Smith  
Senior Associate Justice